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Attorneys for Defendants Matthew T. Gregory and Melvin Grey

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

MOHAMMED SHAJAHAN ALI,

Plaintiff,

vs.

MATTHEW T. GREGORY, individually  
and in his capacity as Attorney General of  
the Commonwealth of the Northern Mariana  
Islands, and MELVIN GREY, individually  
and in his capacity as Director of  
Immigration for the Commonwealth of the  
Northern Mariana Islands,

Defendants.

CIVIL ACTION NO. 07-0018

**DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF  
SUBJECT MATTER  
JURISDICTION — RIPENESS;  
CERTIFICATE OF SERVICE**

Hearing: Thursday, 30 August 2007  
Time: 9:00 a.m.  
Judge: Hon. Alex R. Munson

**PLEASE TAKE NOTICE**, pursuant to Local Rule 7.1.b., that Defendants move  
to dismiss the First Amended Complaint, as set forth below.

1 **COME NOW** the Defendants, through their counsel the Commonwealth of the  
 2 Northern Mariana Islands (CNMI) Office of the Attorney General (OAG), and move  
 3 pursuant to Federal Rule of Civil Procedure 12(b)(1) to dismiss the First Amended  
 4 Complaint due to lack of subject matter jurisdiction, specifically, lack of ripeness.

## 6 **I. STANDARD FOR MOTION TO DISMISS**

7 For motions to dismiss under Rule 12(b)(1), unlike a motion under Rule 12(b)(6),  
 8 the moving party may submit

9 affidavits or any other evidence properly before the court....  
 10 It then becomes necessary for the party opposing the motion to  
 11 present affidavits or any other evidence necessary to satisfy its  
 12 burden of establishing that the court, in fact, possesses subject  
 matter jurisdiction. The district court obviously does not abuse  
 its discretion by looking to this extra-pleading material in  
 deciding the issue, even if it becomes necessary to resolve  
 factual disputes.

13 St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir.1989) (citations omitted);  
 14 see also Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377,  
 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994) ("Federal courts are courts of limited  
 15 jurisdiction. . . . It is to be presumed that a cause lies outside this limited  
 16 jurisdiction, and the burden of establishing the contrary rests upon the party  
 asserting jurisdiction.") (citations omitted).

17 Association of American Medical Colleges v. United States, 217 F.3d 770, 778-79  
 18 (9th Cir. 2000).

## 20 **II. ARGUMENT**

21 This case is not proper for resolution under 28 U.S.C. § 1331 or for declaratory  
 22 relief under 28 U.S.C. § 2201 because the matter is still subject to administrative  
 23 proceedings under the laws of the CNMI and has not ripened into a controversy subject to  
 24 adjudication. Defendants admit that Plaintiff submitted an application for renewal of his  
 25 permit for the year November 2006-2007. See First Amended Complaint, ¶ 8. Defendants

1 further admit that the permit application has been denied by Defendant Grey. Id.  
2 However, as set forth below, Defendants would deny that the appeal is pending before  
3 Defendant Gregory. Certainly no decision has been alleged to have been made by him.

4 Paragraph 20 of the First Amended Complaint is admitted as to the allegation that  
5 Defendant Grey denied the permit application based on 3 CMC § 4372 and Immigration  
6 Regulation 713 (attached to First Amended Complaint). If an answer were to be filed at  
7 this time, Defendants would deny that Defendant Gregory will evaluate and determine the  
8 appeal because that outcome is speculative. The issue must first be determined by  
9 an administrative hearing officer. Whether an appeal from that decision will occur is  
10 unknown. The hearing is presently scheduled for August 22, 2007. A copy of the notice  
11 of Administrative Hearing is attached, and is judicially noticeable.

12 Likewise, Paragraph 26 of the First Amended Complaint would be denied for the  
13 reason that Plaintiff's claim has not yet been determined in the administrative process  
14 within the CNMI OAG, Division of Immigration. As shown in the attached notice,  
15 Plaintiff's administrative hearing has been scheduled, but has not been held.

16 Plaintiff is not entitled to a declaration from this Court because the case is not ripe  
17 for adjudication under 28 U.S.C. § 2201.

18 "As a prudential matter, we will not consider a claim to be ripe for judicial  
19 resolution 'if it rests upon contingent future events that may not occur as  
20 anticipated, or indeed may not occur at all.'" Texas v. United States,  
21 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998) (quoting Thomas  
v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 581, 105 S.Ct. 3325, 87  
L.Ed.2d 409 (1985)); accord Hodgers-Durgin v. de la Vina, 199 F.3d 1037,  
1044 (9th Cir.1999).

22 Scott v. Pasadena Unified School Dist., 306 F.3d 646, 662 (9th Cir. 2002). See also  
23 Association of American Medical Colleges v. United States, 217 F.3d 770, 779-84  
24 (9th Cir. 2000); Chang v. United States, 327 F.3d 911 921-22 (9th Cir. 2003) (claim ripe  
25 where INS failed to act within the 90-day period required by statute and it was undisputed

1 that petitions would be rejected if precedent applied to them; if denial is *certain* review  
2 will not be barred based on ripeness).

3 Here an administrative hearing officer and the Attorney General of the CNMI have  
4 yet to apply the facts to the law in the case of Plaintiff. Plaintiff certainly has not conceded  
5 or admitted in his complaint that he does not qualify for a permit.

#### 7 IV. CONCLUSION

8 The Court lacks of subject matter jurisdiction to consider the First Amended  
9 Complaint due to an absence of ripeness. The First Amended Complaint should therefore  
10 be dismissed.

11  
12 Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL

13  
14 Dated: Monday, 9 July 2007.

/s/  
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GREGORY BAKA # F0199  
Deputy Attorney General

15  
16 Dated: Monday, 9 July 2007.

/s/  
\_\_\_\_\_  
KEVIN A. LYNCH # F0230  
Assistant Attorney General

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19 Attorneys for Defendants  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(d), the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following documents to the last known address(es) listed below on the date(s) indicated.

**DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION — RIPENESS; CERTIFICATE OF SERVICE**

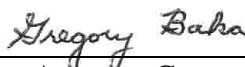
2. As set forth below, this service was accomplished by personal delivery; U.S. Mail; deposit with Clerk of Court (in attorney box), cf. Fed. R. Civ. P. 5(b)(2)(D); or electronic service, see Local Rule 5.1.

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**Via Electronic Service**

3. I declare under penalty of perjury that the foregoing is true and correct. Executed on Monday, 9 July 2007.

  
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Deputy Attorney General  
Attorney for Defendants